



State of Wisconsin
2003 - 2004 LEGISLATURE

LRBs0410/12
CH/MD:kg/cs/jd:mv
stays

SENATE SUBSTITUTE AMENDMENT,
TO 2003 ASSEMBLY BILL 861

Assembly

No other
Changes

Now

Regen

1 AN ACT *to repeal* 51.30 (4) (b) 10m., 980.02 (2) (ag), 980.03 (5), 980.05 (1m),
2 980.09 (1) (title), 980.09 (2) and 980.10; *to renumber* 46.055, 978.13 (2) and
3 980.01 (1); *to renumber and amend* 938.396 (2) (e), 978.043, 980.015 (1),
4 980.015 (4), 980.03 (4), 980.04 (2), 980.07 (1), 980.09 (1) (a), 980.09 (1) (b) and
5 980.09 (1) (c); *to amend* 20.435 (2) (bm), 46.03 (1), 46.055 (title), 46.058 (2m),
6 48.396 (1), 48.396 (5) (a) (intro.), 51.30 (3) (a), 51.30 (3) (b), 51.30 (4) (b) 8m.,
7 51.30 (4) (b) 11., 51.375 (1) (a), 109.09 (1), 146.82 (2) (c), 301.45 (1g) (dt), 301.45
8 (3) (a) 3r., 301.45 (3) (b) 3., 301.45 (5) (b) 2., 756.06 (2) (b), 801.52, 808.04 (3),
9 808.04 (4), 808.075 (4) (h), 905.04 (4) (a), 911.01 (4) (c), 938.396 (1), 938.396 (5)
10 (a) (intro.), 938.78 (2) (e), 950.04 (1v) (xm), 967.03, 972.15 (4), 978.03 (3),
11 978.045 (1r) (intro.), 978.05 (6) (a), 978.05 (8) (b), 980.01 (5), 980.01 (6) (a),
12 980.01 (6) (b), 980.01 (6) (c), 980.01 (7), 980.015 (2) (intro.), 980.015 (2) (a),
13 980.015 (2) (b), 980.015 (2) (c), 980.02 (1) (a), 980.02 (2) (c), 980.02 (4) (intro.),

1 980.03 (2) (intro.), 980.03 (3), 980.04 (1), 980.04 (3), 980.05 (1), 980.05 (3) (a),
2 980.05 (3) (b), 980.065 (1m), 980.07 (2), 980.07 (3), 980.09 (title), 980.101 (2) (a),
3 980.11 (2) (intro.) and 980.12 (1); **to repeal and recreate** 809.10 (1) (d), 809.30
4 (1) (c), 809.30 (1) (f) and 980.08; and **to create** 46.055 (2), 48.396 (6), 48.78 (2)
5 (e), 48.981 (7) (a) 8s., 51.30 (3) (bm), 51.30 (4) (b) 8s., 118.125 (2) (ck), 146.82 (2)
6 (cm), 756.06 (2) (cm), 814.61 (1) (c) 6., 938.35 (1) (e), 972.15 (6), 973.155 (1) (c),
7 978.043 (2), 978.13 (2) (a), 980.01 (1g), 980.01 (1m), 980.01 (6) (am), 980.01 (6)
8 (bm), 980.015 (1) (b), 980.015 (2) (d), 980.02 (1) (b) 3., 980.02 (1m), 980.02 (6),
9 980.031 (title), 980.031 (1) and (2), 980.034, 980.036, 980.038, 980.04 (2) (b),
10 980.05 (2m), 980.07 (1) (b), 980.07 (1g), 980.07 (1m), 980.07 (4) to (7), 980.093,
11 980.095, 980.14 (title) and 980.14 (1) of the statutes; **relating to:** the definition
12 of sexually violent person, sexually violent person commitment proceedings,
13 criteria for supervised release, escape from custody by a person who is subject
14 to a sexually violent person commitment proceeding, creating a committee to
15 make recommendations regarding the location of a facility for the treatment of
16 sexual predators, payments in lieu of taxes and grants for a municipality in
17 which such a facility is located, making an appropriation, and providing
18 penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

19 **SECTION 1.** 20.435 (2) (bm) of the statutes is amended to read:

20 20.435 (2) (bm) *Secure mental health units or facilities; payments relating to*
21 *transitional facilities.* The amounts in the schedule for the general program
22 operations of secure mental health units or facilities under s. 980.065 for persons
23 committed under s. 980.06 and placed in a secure mental health unit or facility and

1 for making payments to municipalities under s. 46.055 (2) (b) and grants to
2 municipalities under s. 46.055 (2) (c).

3 SECTION 2. 46.03 (1) of the statutes is amended to read:

4 46.03 (1) INSTITUTIONS GOVERNED. Maintain and govern the Mendota and the
5 Winnebago mental health institutes; the secure mental health facility established
6 under s. 46.055 (1); and the centers for the developmentally disabled.

7 SECTION 3. 46.055 (title) of the statutes is amended to read:

8 46.055 (title) ~~Secure mental health facility~~ **Facilities for sexually**
9 **violent persons.**

10 SECTION 4. 46.055 of the statutes is renumbered 46.055 (1).

11 SECTION 5. 46.055 (2) of the statutes is created to read:

12 46.055 (2) (a) In this subsection, “transitional facility” means the facility that
13 is enumerated in 2001 Wisconsin Act 16, section 9107 (1) (d) 1., and that will be a
14 transitional facility for the housing of persons committed to the custody of the
15 department under ch. 980.

16 (b) Annually, from the appropriation under s. 20.435 (2) (bm), the department
17 shall pay a municipality in which a transitional facility is located a sum in lieu of
18 taxes for the services, improvements, or facilities that the municipality furnishes to
19 the transitional facility. The municipality shall determine the amount that the
20 department shall pay, but it may not exceed the amount that would be levied as the
21 annual property tax of the municipality upon the transitional facility.

22 (c) Annually, from the appropriation under s. 20.435 (2) (bm), the department
23 shall make a grant of \$100,000 to a municipality in which a transitional facility is
24 located to reimburse the municipality for the cost of providing additional security for
25 the area in which the transitional facility is located.

1 **SECTION 6.** 46.058 (2m) of the statutes is amended to read:

2 **46.058 (2m)** The superintendents of the secure mental health facility
3 established under s. 46.055 (1), the Wisconsin resource center established under s.
4 46.056 and any secure mental health unit or facility provided by the department of
5 corrections under s. 980.065 (2) shall adopt proper means to prevent escapes of
6 persons detained or committed to the facility, center or unit under ch. 980 and may
7 adopt proper means to pursue and capture persons detained or committed to the
8 facility, center or unit under ch. 980 who have escaped. In adopting means under this
9 subsection to prevent escape and pursue and capture persons who have escaped, a
10 superintendent may delegate to designated staff members of the facility, center or
11 unit the power to use necessary and appropriate force, as defined by the department
12 by rule, to prevent escapes and capture escaped persons.

13 **SECTION 7.** 48.396 (1) of the statutes is amended to read:

14 **48.396 (1)** Law enforcement officers' records of children shall be kept separate
15 from records of adults. Law enforcement officers' records of the adult expectant
16 mothers of unborn children shall be kept separate from records of other adults. Law
17 enforcement officers' records of children and the adult expectant mothers of unborn
18 children shall not be open to inspection or their contents disclosed except under sub.
19 (1b), (1d) ~~or~~, (5), or (6) or s. 48.293 or by order of the court. This subsection does not
20 apply to the representatives of newspapers or other reporters of news who wish to
21 obtain information for the purpose of reporting news without revealing the identity
22 of the child or expectant mother involved, to the confidential exchange of information
23 between the police and officials of the school attended by the child or other law
24 enforcement or social welfare agencies or to children 10 years of age or older who are
25 subject to the jurisdiction of the court of criminal jurisdiction. A public school official

1 who obtains information under this subsection shall keep the information
2 confidential as required under s. 118.125 and a private school official who obtains
3 information under this subsection shall keep the information confidential in the
4 same manner as is required of a public school official under s. 118.125. A law
5 enforcement agency that obtains information under this subsection shall keep the
6 information confidential as required under this subsection and s. 938.396 (1). A
7 social welfare agency that obtains information under this subsection shall keep the
8 information confidential as required under ss. 48.78 and 938.78.

9 **SECTION 8.** 48.396 (5) (a) (intro.) of the statutes is amended to read:

10 48.396 (5) (a) (intro.) Any person who is denied access to a record under sub.
11 (1), (1b) ~~or~~, (1d), or (6) may petition the court to order the disclosure of the records
12 governed by the applicable subsection. The petition shall be in writing and shall
13 describe as specifically as possible all of the following:

14 **SECTION 9.** 48.396 (6) of the statutes is created to read:

15 48.396 (6) Records of law enforcement officers and of the court assigned to
16 exercise jurisdiction under this chapter and ch. 938 shall be open for inspection by
17 and production to authorized representatives of the department of corrections, the
18 department of health and family services, the department of justice, or a district
19 attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if
20 the records involve or relate to an individual who is the subject of or who is being
21 evaluated for a proceeding under ch. 980. The court in which the proceeding under
22 ch. 980 is pending may issue any protective orders that it determines are appropriate
23 concerning information made available or disclosed under this subsection. Any
24 representative of the department of corrections, the department of health and family
25 services, the department of justice, or a district attorney may disclose information

1 obtained under this subsection for any purpose consistent with any proceeding under
2 ch. 980.

3 **SECTION 10.** 48.78 (2) (e) of the statutes is created to read:

4 48.78 (2) (e) Notwithstanding par. (a), an agency shall, upon request, disclose
5 information to authorized representatives of the department of corrections, the
6 department of health and family services, the department of justice, or a district
7 attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if
8 the information involves or relates to an individual who is the subject of or who is
9 being evaluated for a proceeding under ch. 980. The court in which the proceeding
10 under ch. 980 is pending may issue any protective orders that it determines are
11 appropriate concerning information made available or disclosed under this
12 paragraph. Any representative of the department of corrections, the department of
13 health and family services, the department of justice, or a district attorney may
14 disclose information obtained under this paragraph for any purpose consistent with
15 any proceeding under ch. 980.

16 **SECTION 11.** 48.981 (7) (a) 8s. of the statutes is created to read:

17 48.981 (7) (a) 8s. Authorized representatives of the department of corrections,
18 the department of health and family services, the department of justice, or a district
19 attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if
20 the reports or records involve or relate to an individual who is the subject of or who
21 is being evaluated for a proceeding under ch. 980. The court in which the proceeding
22 under ch. 980 is pending may issue any protective orders that it determines are
23 appropriate concerning information made available or disclosed under this
24 subdivision. Any representative of the department of corrections, the department
25 of health and family services, the department of justice, or a district attorney may

1 disclose information obtained under this subdivision for any purpose consistent with
2 any proceeding under ch. 980.

3 **SECTION 12.** 51.30 (3) (a) of the statutes is amended to read:

4 51.30 (3) (a) Except as provided in pars. (b) and, (bm), (c), and (d), the files and
5 records of the court proceedings under this chapter shall be closed but shall be
6 accessible to any individual who is the subject of a petition filed under this chapter.

7 **SECTION 13.** 51.30 (3) (b) of the statutes is amended to read:

8 51.30 (3) (b) An individual's attorney or guardian ad litem and the corporation
9 counsel shall have access to the files and records of the court proceedings under this
10 chapter without the individual's consent and without modification of the records in
11 order to prepare for involuntary commitment or recommitment proceedings,
12 reexaminations, appeals, or other actions relating to detention, admission, or
13 commitment under this chapter or ch. 971 ~~or~~, 975, or 980.

14 **SECTION 14.** 51.30 (3) (bm) of the statutes is created to read:

15 51.30 (3) (bm) The files and records of court proceedings under this chapter
16 shall be released to authorized representatives of the department of corrections, the
17 department of health and family services, the department of justice, or a district
18 attorney for use in the evaluation or prosecution of any proceeding under ch. 980, if
19 the files or records involve or relate to an individual who is the subject of or who is
20 being evaluated for a proceeding under ch. 980. The court in which the proceeding
21 under ch. 980 is pending may issue any protective orders that it determines are
22 appropriate concerning information made available or disclosed under this
23 paragraph. Any representative of the department of corrections, the department of
24 health and family services, the department of justice, or a district attorney may

1 disclose information obtained under this paragraph for any purpose consistent with
2 any proceeding under ch. 980.

3 **SECTION 15.** 51.30 (4) (b) 8m. of the statutes is amended to read:

4 51.30 (4) (b) 8m. To appropriate examiners and facilities in accordance with s.
5 971.17 (2) (e), (4) (c), and (7) (c), ~~980.03 (4) or 980.08 (3)~~. The recipient of any
6 information from the records shall keep the information confidential except as
7 necessary to comply with s. 971.17 ~~or ch. 980~~.

8 **SECTION 16.** 51.30 (4) (b) 8s. of the statutes is created to read:

9 51.30 (4) (b) 8s. To appropriate persons in accordance with s. 980.031 (4) and
10 to authorized representatives of the department of corrections, the department of
11 health and family services, the department of justice, or a district attorney for use
12 in the evaluation or prosecution of any proceeding under ch. 980, if the treatment
13 records involve or relate to an individual who is the subject of or who is being
14 evaluated for a proceeding under ch. 980. The court in which the proceeding under
15 ch. 980 is pending may issue any protective orders that it determines are appropriate
16 concerning information made available or disclosed under this subdivision. Any
17 representative of the department of corrections, the department of health and family
18 services, the department of justice, or a district attorney may disclose information
19 obtained under this subdivision for any purpose consistent with any proceeding
20 under ch. 980.

21 **SECTION 17.** 51.30 (4) (b) 10m. of the statutes is repealed.

22 **SECTION 18.** 51.30 (4) (b) 11. of the statutes is amended to read:

23 51.30 (4) (b) 11. To the subject individual's counsel or guardian ad litem and
24 the corporation counsel, without modification, at any time in order to prepare for
25 involuntary commitment or recommitment proceedings, reexaminations, appeals, or

1 other actions relating to detention, admission, commitment, or patients' rights under
2 this chapter or ch. 48, 971, ~~or 975,~~ or 980.

3 **SECTION 19.** 51.375 (1) (a) of the statutes is amended to read:

4 51.375 (1) (a) "Community placement" means conditional transfer into the
5 community under s. 51.35 (1), conditional release under s. 971.17, parole from a
6 commitment for specialized treatment under ch. 975, ~~or conditional~~ supervised
7 release under ch. 980.

8 **SECTION 20.** 109.09 (1) of the statutes is amended to read:

9 109.09 (1) The department shall investigate and attempt equitably to adjust
10 controversies between employers and employees as to alleged wage claims. The
11 department may receive and investigate any wage claim which is filed with the
12 department, or received by the department under s. 109.10 (4), no later than 2 years
13 after the date the wages are due. The department may, after receiving a wage claim,
14 investigate any wages due from the employer against whom the claim is filed to any
15 employee during the period commencing 2 years before the date the claim is filed.
16 The department shall enforce this chapter and ss. 66.0903, 103.02, 103.49, 103.82,
17 104.12 and 229.8275. In pursuance of this duty, the department may sue the
18 employer on behalf of the employee to collect any wage claim or wage deficiency and
19 ss. 109.03 (6) and 109.11 (2) and (3) shall apply to such actions. Except for actions
20 under s. 109.10, the department may refer such an action to the district attorney of
21 the county in which the violation occurs for prosecution and collection and the
22 district attorney shall commence an action in the circuit court having appropriate
23 jurisdiction. Any number of wage claims or wage deficiencies against the same
24 employer may be joined in a single proceeding, but the court may order separate
25 trials or hearings. In actions that are referred to a district attorney under this

1 subsection, any taxable costs recovered by the district attorney shall be paid into the
2 general fund of the county in which the violation occurs and used by that county to
3 meet its financial responsibility under s. 978.13 (2) (b) for the operation of the office
4 of the district attorney who prosecuted the action.

5 **SECTION 21.** 118.125 (2) (ck) of the statutes is created to read:

6 118.125 (2) (ck) The school district clerk or his or her designee shall make pupil
7 records available for inspection or disclose the contents of pupil records to authorized
8 representatives of the department of corrections, the department of health and
9 family services, the department of justice, or a district attorney for use in the
10 evaluation or prosecution of any proceeding under ch. 980, if the pupil records involve
11 or relate to an individual who is the subject of or who is being evaluated for a
12 proceeding under ch. 980. The court in which the proceeding under ch. 980 is pending
13 may issue any protective orders that it determines are appropriate concerning pupil
14 records made available or disclosed under this paragraph. Any representative of the
15 department of corrections, the department of health and family services, the
16 department of justice, or a district attorney may disclose information obtained under
17 this paragraph for any purpose consistent with any proceeding under ch. 980.

18 **SECTION 22.** 146.82 (2) (c) of the statutes is amended to read:

19 146.82 (2) (c) Notwithstanding sub. (1), patient health care records shall be
20 released to appropriate examiners and facilities in accordance with ~~ss.~~ s. 971.17 (2)
21 (e), (4) (c) and (7) (c), ~~980.03 (4) and 980.08 (3)~~. The recipient of any information from
22 the records shall keep the information confidential except as necessary to comply
23 with s. 971.17 ~~or ch. 980~~.

24 **SECTION 23.** 146.82 (2) (cm) of the statutes is created to read:

1 146.82 (2) (cm) Notwithstanding sub. (1), patient health care records shall be
2 released to appropriate persons in accordance with s. 980.031 (4) and to authorized
3 representatives of the department of corrections, the department of health and
4 family services, the department of justice, or a district attorney for use in the
5 evaluation or prosecution of any proceeding under ch. 980, if the treatment records
6 involve or relate to an individual who is the subject of or who is being evaluated for
7 a proceeding under ch. 980. The court in which the proceeding under ch. 980 is
8 pending may issue any protective orders that it determines are appropriate
9 concerning records made available or disclosed under this paragraph. Any
10 representative of the department of corrections, the department of health and family
11 services, the department of justice, or a district attorney may disclose information
12 obtained under this paragraph for any purpose consistent with any proceeding under
13 ch. 980.

14 **SECTION 24.** 301.45 (1g) (dt) of the statutes is amended to read:

15 301.45 (1g) (dt) Is in institutional care or on ~~conditional~~ supervised release
16 under ch. 980 on or after June 2, 1994.

17 **SECTION 25.** 301.45 (3) (a) 3r. of the statutes is amended to read:

18 301.45 (3) (a) 3r. If the person has been committed under ch. 980, he or she is
19 subject to this subsection upon being placed on supervised release under s. 980.06
20 (2), 1997 stats., or s. 980.08 or, if he or she was not placed on supervised release,
21 before being discharged under s. 980.09 or ~~980.10~~ 980.093.

22 **SECTION 26.** 301.45 (3) (b) 3. of the statutes is amended to read:

23 301.45 (3) (b) 3. The department of health and family services shall notify a
24 person who is being placed on conditional release, supervised release, conditional
25 transfer or parole, or is being terminated or discharged from a commitment, under

1 s. 51.20, 51.35 or 971.17 or ch. 975 or 980 and who is covered under sub. (1g) of the
2 need to comply with the requirements of this section.

3 **SECTION 27.** 301.45 (5) (b) 2. of the statutes is amended to read:

4 301.45 (5) (b) 2. The person has been found to be a sexually violent person under
5 ch. 980, regardless of whether the person is has been discharged under s. 980.10,
6 2001 stats., s. 980.09 or 980.10 980.093 from the sexually violent person
7 commitment, except that the person no longer has to comply with this section if the
8 finding that the person is a sexually violent person has been reversed, set aside or
9 vacated.

10 **SECTION 28.** 756.06 (2) (b) of the statutes is amended to read:

11 756.06 (2) (b) Except as provided in ~~par.~~ pars. (c) and (cm), a jury in a civil case
12 shall consist of 6 persons unless a party requests a greater number, not to exceed 12.
13 The court, on its own motion, may require a greater number, not to exceed 12.

14 **SECTION 29.** 756.06 (2) (cm) of the statutes is created to read:

15 756.06 (2) (cm) A jury in a trial under s. 980.05 shall consist of the number of
16 persons specified in s. 980.05 (2) unless a lesser number has been stipulated to and
17 approved under s. 980.05 (2m) (c). A jury in a hearing under s. 980.09 (2m) or 980.093
18 (3) shall consist of the number of persons specified in s. 980.09 (2m) or 980.093 (3),
19 whichever is applicable, unless a lesser number has been stipulated to and approved
20 under s. 980.095 (3).

21 **SECTION 30.** 801.52 of the statutes is amended to read:

22 **801.52 Discretionary change of venue.** The court may at any time, upon
23 its own motion, the motion of a party or the stipulation of the parties, change the
24 venue to any county in the interest of justice or for the convenience of the parties or
25 witnesses. This section does not apply to proceedings under ch. 980.

1 **SECTION 31.** 808.04 (3) of the statutes is amended to read:

2 808.04 (3) Except as provided in subs. (4) and (7), an appeal in a criminal case
3 or a case under ch. 48, 51, 55 ~~or~~ 938, or 980 shall be initiated within the time period
4 specified in s. 809.30.

5 **SECTION 32.** 808.04 (4) of the statutes is amended to read:

6 808.04 (4) Except as provided in sub. (7m), an appeal by the state in either a
7 criminal case under s. 974.05 or a case under ch. 48 ~~or~~ 938, or 980 shall be initiated
8 within 45 days of entry of the judgment or order appealed from.

9 **SECTION 33.** 808.075 (4) (h) of the statutes is amended to read:

10 808.075 (4) (h) Commitment, supervised release, recommitment, discharge,
11 and postcommitment relief under ss. 980.06, 980.08, 980.09, ~~980.10~~ 980.093, and
12 980.101 of a person found to be a sexually violent person under ch. 980.

13 **SECTION 34.** 809.10 (1) (d) of the statutes, as affected by Supreme Court Order
14 02–01, is repealed and recreated to read:

15 809.10 (1) (d) *Docketing statement.* The person shall send the court of appeals
16 an original and one copy of a completed docketing statement on a form prescribed by
17 the court of appeals. The docketing statement shall accompany the court of appeals'
18 copy of the notice of appeal. The person shall send a copy of the completed docketing
19 statement to the other parties to the appeal. Docketing statements need not be filed
20 in appeals brought under s. 809.105, 809.107, 809.32, or 974.06 (7), in cases under
21 ch. 980, or in cases in which a party represents himself or herself. Docketing
22 statements need not be filed in appeals brought under s. 809.30 or 974.05, or by the
23 state or defendant in permissive appeals in criminal cases pursuant to s. 809.50,
24 except that docketing statements shall be filed in cases arising under chs. 48, 51, 55,
25 or 938.

1 **SECTION 35.** 809.30 (1) (c) of the statutes, as affected by Supreme Court 02–01,
2 is repealed and recreated to read:

3 809.30 (1) (c) “Postconviction relief” means an appeal or a motion for
4 postconviction relief in a criminal case, other than an appeal, motion, or petition
5 under ss. 302.113 (7m), 302.113 (9g), 973.19, 973.195, 974.06, or 974.07 (2). In a ch.
6 980 case, the term means an appeal or a motion for postcommitment relief under s.
7 980.038 (4).

8 **SECTION 36.** 809.30 (1) (f) of the statutes, as affected by Supreme Court 02–01,
9 is repealed and recreated to read:

10 809.30 (1) (f) “Sentencing” means the imposition of a sentence, a fine, or
11 probation in a criminal case. In a ch. 980 case, the term means the entry of an order
12 under s. 980.06.

13 **SECTION 37.** 814.61 (1) (c) 6. of the statutes is created to read:

14 814.61 (1) (c) 6. An action for civil commitment under ch. 51, 55, or 980.

15 **SECTION 38.** 905.04 (4) (a) of the statutes is amended to read:

16 905.04 (4) (a) *Proceedings for hospitalization, control, care, and treatment of*
17 *a sexually violent person, guardianship, protective services, or protective placement.*
18 There is no privilege under this rule as to communications and information relevant
19 to an issue in proceedings to hospitalize the patient for mental illness, to appoint a
20 guardian under s. 880.33, for control, care, and treatment of a sexually violent person
21 under ch. 980, for court–ordered protective services or protective placement, or for
22 review of guardianship, protective services, or protective placement orders, if the
23 physician, registered nurse, chiropractor, psychologist, social worker, marriage and
24 family therapist, or professional counselor in the course of diagnosis or treatment
25 has determined that the patient is in need of hospitalization, control, care, and

1 treatment as a sexually violent person, guardianship, protective services, or
2 protective placement.

3 **SECTION 39.** 911.01 (4) (c) of the statutes is amended to read:

4 911.01 (4) (c) *Miscellaneous proceedings.* Proceedings for extradition or
5 rendition; sentencing, granting or revoking probation, modification of a bifurcated
6 sentence under s. 302.113 (9g), adjustment of a bifurcated sentence under s. 973.195
7 (1r), issuance of arrest warrants, criminal summonses and search warrants;
8 hearings under s. 980.093 (2); proceedings under s. 971.14 (1) (c); proceedings with
9 respect to pretrial release under ch. 969 except where habeas corpus is utilized with
10 respect to release on bail or as otherwise provided in ch. 969.

11 **SECTION 40.** 938.35 (1) (e) of the statutes is created to read:

12 938.35 (1) (e) In a hearing, trial, or other proceeding under ch. 980 relating to
13 a juvenile.

14 **SECTION 41.** 938.396 (1) of the statutes is amended to read:

15 938.396 (1) Law enforcement officers' records of juveniles shall be kept
16 separate from records of adults. Law enforcement officers' records of juveniles shall
17 not be open to inspection or their contents disclosed except under sub. (1b), (1d), (1g),
18 (1m), (1r), (1t), (1x) ~~or~~, (5), or (10) or s. 938.293 or by order of the court. This
19 subsection does not apply to representatives of the news media who wish to obtain
20 information for the purpose of reporting news without revealing the identity of the
21 juvenile involved, to the confidential exchange of information between the police and
22 officials of the school attended by the juvenile or other law enforcement or social
23 welfare agencies, or to juveniles 10 years of age or older who are subject to the
24 jurisdiction of the court of criminal jurisdiction. A public school official who obtains
25 information under this subsection shall keep the information confidential as

1 required under s. 118.125 and a private school official who obtains information under
2 this subsection shall keep the information confidential in the same manner as is
3 required of a public school official under s. 118.125. A law enforcement agency that
4 obtains information under this subsection shall keep the information confidential as
5 required under this subsection and s. 48.396 (1). A social welfare agency that obtains
6 information under this subsection shall keep the information confidential as
7 required under ss. 48.78 and 938.78.

8 **SECTION 42.** 938.396 (2) (e) of the statutes is renumbered 938.396 (10) and
9 amended to read:

10 938.396 (10) ~~Upon request of the department of corrections to review court A~~
11 law enforcement agency's records and records for the purpose of providing, under s.
12 980.015 (3) (a), of the court assigned to exercise jurisdiction under this chapter and
13 ch. 48 shall be open for inspection by authorized representatives of the department
14 of corrections, the department of health and family services, the department of
15 justice, or a district attorney with a person's offense history, the court shall open for
16 inspection by authorized representatives of the department of corrections the
17 records of the court relating to any juvenile who has been adjudicated delinquent for
18 a sexually violent offense, as defined in s. 980.01 (6) for use in the evaluation or
19 prosecution of any proceeding under ch. 980, if the records involve or relate to an
20 individual who is the subject of or who is being evaluated for a proceeding under ch.
21 980. The court in which the proceeding under ch. 980 is pending may issue any
22 protective orders that it determines are appropriate concerning information made
23 available or disclosed under this subsection. Any representative of the department
24 of corrections, the department of health and family services, the department of

1 justice, or a district attorney may disclose information obtained under this
2 subsection for any purpose consistent with any proceeding under ch. 980.

3 **SECTION 43.** 938.396 (5) (a) (intro.) of the statutes is amended to read:

4 938.396 (5) (a) (intro.) Any person who is denied access to a record under sub.
5 (1), (1b), (1d), (1g), (1m), (1r) ~~or~~, (1t), or (10) may petition the court to order the
6 disclosure of the records governed by the applicable subsection. The petition shall
7 be in writing and shall describe as specifically as possible all of the following:

8 **SECTION 44.** 938.78 (2) (e) of the statutes is amended to read:

9 938.78 (2) (e) ~~Paragraph (a) does not prohibit the department from disclosing~~
10 Notwithstanding par. (a), an agency shall, upon request, disclose information about
11 an individual adjudged delinquent under s. 938.183 or 938.34 for a sexually violent
12 offense, as defined in s. 980.01 (6), to authorized representatives of the department
13 of corrections, the department of health and family services, the department of
14 justice, or a district attorney or a judge acting under ch. 980 or to an attorney who
15 represents a person subject to a petition for use in the evaluation or prosecution of
16 any proceeding under ch. 980, if the information involves or relates to an individual
17 who is the subject of or who is being evaluated for a proceeding under ch. 980. The
18 court in which the ~~petition proceeding under s. 980.02 is filed~~ ch. 980 is pending may
19 issue any protective orders that it determines are appropriate concerning
20 information disclosed under this paragraph. Any representative of the department
21 of corrections, the department of health and family services, the department of
22 justice, or a district attorney may disclose information obtained under this
23 paragraph for any purpose consistent with any proceeding under ch. 980.

24 **SECTION 45.** 950.04 (1v) (xm) of the statutes is amended to read:

1 950.04 (1v) (xm) To have the department of health and family services make
2 a reasonable attempt to notify the victim under s. 980.11 regarding supervised
3 release under s. 980.08 and discharge under s. 980.09 or ~~980.10~~ 980.093.

4 **SECTION 46.** 967.03 of the statutes is amended to read:

5 **967.03 District attorneys.** Wherever in chs. 967 to ~~979~~ 980 powers or duties
6 are imposed upon district attorneys, the same powers and duties may be discharged
7 by any of their duly qualified deputies or assistants.

8 **SECTION 47.** 972.15 (4) of the statutes is amended to read:

9 972.15 (4) After sentencing, unless otherwise authorized under sub. (5) or (6)
10 or ordered by the court, the presentence investigation report shall be confidential
11 and shall not be made available to any person except upon specific authorization of
12 the court.

13 **SECTION 48.** 972.15 (6) of the statutes is created to read:

14 972.15 (6) The presentence investigation report and any information contained
15 in it or upon which it is based may be used by any of the following persons in any
16 evaluation, examination, referral, hearing, trial, postcommitment relief proceeding,
17 appeal, or other proceeding under ch. 980:

18 (a) The department of corrections.

19 (b) The department of health and family services.

20 (c) The person who is the subject of the presentence investigation report, his
21 or her attorney, or an agent or employee of the attorney.

22 (d) The attorney representing the state or an agent or employee of the attorney.

23 (e) A licensed physician, licensed psychologist, or other mental health
24 professional who is examining the subject of the presentence investigation report.

25 (f) The court and, if applicable, the jury hearing the case.

1 **SECTION 49.** 973.155 (1) (c) of the statutes is created to read:

2 973.155 (1) (c) The categories in par. (a) include time during which the
3 convicted offender was in the custody of the department of health and family services
4 under ch. 980 only if the offender was confined during that time and the confinement
5 and the offender's conviction resulted from the same course of conduct.

6 **SECTION 50.** 978.03 (3) of the statutes is amended to read:

7 978.03 (3) Any assistant district attorney under sub. (1), (1m) or (2) must be
8 an attorney admitted to practice law in this state and, except as provided in ss.
9 978.043 (1) and 978.044, may perform any duty required by law to be performed by
10 the district attorney. The district attorney of the prosecutorial unit under sub. (1),
11 (1m), or (2) may appoint such temporary counsel as may be authorized by the
12 department of administration.

13 **SECTION 51.** 978.043 of the statutes is renumbered 978.043 (1) and amended
14 to read.

15 978.043 (1) The district attorney of the prosecutorial unit that consists of
16 Brown County and the district attorney of the prosecutorial unit that consists of
17 Milwaukee County shall each assign one assistant district attorney in his or her
18 prosecutorial unit to be a sexually violent person commitment prosecutor. An
19 assistant district attorney assigned under this ~~section~~ subsection to be a sexually
20 violent person commitment prosecutor may engage only in the prosecution of
21 sexually violent person commitment proceedings under ch. 980 and, at the request
22 of the district attorney of the prosecutorial unit, may file and prosecute sexually
23 violent person commitment proceedings under ch. 980 in any prosecutorial unit in
24 this state.

25 **SECTION 52.** 978.043 (2) of the statutes is created to read:

1 978.043 (2) If an assistant district attorney assigned under sub. (1) prosecutes
2 or assists in the prosecution of a case under ch. 980 in a prosecutorial unit other than
3 his or her own, the prosecutorial unit in which the case is heard shall reimburse the
4 assistant district attorney's own prosecutorial unit for his or her reasonable costs
5 associated with the prosecution, including transportation, lodging, and meals.
6 Unless otherwise agreed upon by the prosecutorial units involved, the court hearing
7 the case shall determine the amount of money to be reimbursed for expert witness
8 fees under this subsection.

9 **SECTION 53.** 978.045 (1r) (intro.) of the statutes is amended to read:

10 978.045 (1r) (intro.) Any judge of a court of record, by an order entered in the
11 record stating the cause ~~therefor~~ for it, may appoint an attorney as a special
12 prosecutor to perform, for the time being, or for the trial of the accused person, the
13 duties of the district attorney. An attorney appointed under this subsection shall
14 have all of the powers of the district attorney. The judge may appoint an attorney
15 as a special prosecutor at the request of a district attorney to assist the district
16 attorney in the prosecution of persons charged with a crime, in grand jury or John
17 Doe proceedings, in proceedings under ch. 980, or in investigations. The judge may
18 appoint an attorney as a special prosecutor if any of the following conditions exists:

19 **SECTION 54.** 978.05 (6) (a) of the statutes is amended to read:

20 978.05 (6) (a) Institute, commence or appear in all civil actions or special
21 proceedings under and perform the duties set forth for the district attorney under ch.
22 980 and ss. 17.14, 30.03 (2), 48.09 (5), 59.55 (1), 59.64 (1), 70.36, 103.50 (8), 103.92
23 (4), 109.09, 343.305 (9) (a), 453.08, 806.05, 938.09, 938.18, 938.355 (6) (b) and (6g) (a),
24 946.86, 946.87, 961.55 (5), 971.14 and 973.075 to 973.077, perform any duties in
25 connection with court proceedings in a court assigned to exercise jurisdiction under

1 chs. 48 and 938 as the judge may request and perform all appropriate duties and
2 appear if the district attorney is designated in specific statutes, including matters
3 within chs. 782, 976 and 979 and ss. 51.81 to 51.85. Nothing in this paragraph limits
4 the authority of the county board to designate, under s. 48.09 (5), that the corporation
5 counsel provide representation as specified in s. 48.09 (5) or to designate, under s.
6 48.09 (6) or 938.09 (6), the district attorney as an appropriate person to represent the
7 interests of the public under s. 48.14 or 938.14.

8 **SECTION 55.** 978.05 (8) (b) of the statutes is amended to read:

9 978.05 (8) (b) Hire, employ, and supervise his or her staff and, subject to ss.
10 978.043 (1) and 978.044, make appropriate assignments of the staff throughout the
11 prosecutorial unit. The district attorney may request the assistance of district
12 attorneys, deputy district attorneys, or assistant district attorneys from other
13 prosecutorial units or assistant attorneys general who then may appear and assist
14 in the investigation and prosecution of any matter for which a district attorney is
15 responsible under this chapter in like manner as assistants in the prosecutorial unit
16 and with the same authority as the district attorney in the unit in which the action
17 is brought. Nothing in this paragraph limits the authority of counties to regulate the
18 hiring, employment, and supervision of county employees.

19 **SECTION 56.** 978.13 (2) of the statutes is renumbered 978.13 (2) (b).

20 **SECTION 57.** 978.13 (2) (a) of the statutes is created to read:

21 978.13 (2) (a) In this subsection, “costs related to the operation of the district
22 attorney’s office” include costs that a prosecutorial unit must pay under s. 978.043
23 (2) but do not include costs for which a prosecutorial unit receives reimbursement
24 under s. 978.043 (2).

25 **SECTION 58.** 980.01 (1) of the statutes is renumbered 980.01 (1m).

1 **SECTION 59.** 980.01 (1g) of the statutes is created to read:

2 980.01 (1g) “Act of sexual violence” means conduct that constitutes the
3 commission of a sexually violent offense.

4 **SECTION 60.** 980.01 (1m) of the statutes is created to read:

5 980.01 (1m) “Likely” means more likely than not.

6 **SECTION 61.** 980.01 (5) of the statutes is amended to read:

7 980.01 (5) “Sexually motivated” means that one of the purposes for an act is
8 for the actor’s sexual arousal or gratification or for the sexual humiliation or
9 degradation of the victim.

10 **SECTION 62.** 980.01 (6) (a) of the statutes is amended to read:

11 980.01 (6) (a) Any crime specified in s. 940.225 (1) ~~or~~, (2), or (3), 948.02 (1) or
12 (2), 948.025, 948.06, or 948.07.

13 **SECTION 63.** 980.01 (6) (am) of the statutes is created to read:

14 980.01 (6) (am) An offense that, prior to June 2, 1994, was a crime under the
15 law of this state and that is comparable to any crime specified in par. (a).

16 **SECTION 64.** 980.01 (6) (b) of the statutes is amended to read:

17 980.01 (6) (b) Any crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06,
18 940.19 (4) or (5), 940.195 (4) or (5), 940.30, 940.305, 940.31 ~~or~~, 941.32, 943.10, 943.32,
19 or 948.03 that is determined, in a proceeding under s. 980.05 (3) (b), to have been
20 sexually motivated.

21 **SECTION 65.** 980.01 (6) (bm) of the statutes is created to read:

22 980.01 (6) (bm) An offense that, prior to June 2, 1994, was a crime under the
23 law of this state, that is comparable to any crime specified in par. (b) and that is
24 determined, in a proceeding under s. 980.05 (3) (b), to have been sexually motivated.

25 **SECTION 66.** 980.01 (6) (c) of the statutes is amended to read:

1 980.01 (6) (c) Any solicitation, conspiracy, or attempt to commit a crime under
2 par. (a) ~~or~~, (am), (b), or (bm).

3 **SECTION 67.** 980.01 (7) of the statutes is amended to read:

4 980.01 (7) “Sexually violent person” means a person who has been convicted
5 of a sexually violent offense, has been adjudicated delinquent for a sexually violent
6 offense, or has been found not guilty of or not responsible for a sexually violent
7 offense by reason of insanity or mental disease, defect, or illness, and who is
8 dangerous because he or she suffers from a mental disorder that makes it
9 substantially probable likely that the person will engage in one or more acts of sexual
10 violence.

11 **SECTION 68.** 980.015 (1) of the statutes is renumbered 980.015 (1) (intro.) and
12 amended to read:

13 980.015 (1) (intro.) In this section, “agency:

14 (a) “Agency with jurisdiction” means the agency with the authority or duty to
15 release or discharge the person.

16 **SECTION 69.** 980.015 (1) (b) of the statutes is created to read:

17 980.015 (1) (b) “Continuous term of incarceration, any part of which was
18 imposed for a sexually violent offense,” includes confinement in a secured
19 correctional facility, as defined in s. 938.02 (15m), or a secured child caring
20 institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s.
21 938.02 (15p), if the person was placed in the facility for being adjudicated delinquent
22 under s. 48.34, 1993 stats., or under s. 938.183 or 938.34 on the basis of a sexually
23 violent offense.

24 **SECTION 70.** 980.015 (2) (intro.) of the statutes is amended to read:

1 980.015 (2) (intro.) If an agency with jurisdiction has control or custody over
2 a person who may meet the criteria for commitment as a sexually violent person, the
3 agency with jurisdiction shall inform each appropriate district attorney and the
4 department of justice regarding the person as soon as possible beginning ~~3 months~~
5 90 days prior to the applicable date of the following:

6 **SECTION 71.** 980.015 (2) (a) of the statutes is amended to read:

7 980.015 (2) (a) The anticipated discharge ~~from a sentence, anticipated or~~
8 ~~release, on parole or, extended supervision, or anticipated release otherwise, from a~~
9 sentence of imprisonment of a person who has been convicted of or term of
10 confinement in prison that was imposed for a conviction for a sexually violent offense,
11 from a continuous term of incarceration, any part of which was imposed for a sexually
12 violent offense, or from a placement in a Type 1 prison under s. 301.048 (3) (a) 1., any
13 part of which was imposed for a sexually violent offense.

14 **SECTION 72.** 980.015 (2) (b) of the statutes is amended to read:

15 980.015 (2) (b) The anticipated release from a secured correctional facility, as
16 defined in s. 938.02 (15m), or a secured child caring institution, as defined in s. 938.02
17 (15g), or a secured group home, as defined in s. 938.02 (15p), ~~of a~~ if the person was
18 placed in the facility as a result of being adjudicated delinquent under s. 48.34, 1993
19 stats., or under s. 938.183 or 938.34 on the basis of a sexually violent offense.

20 **SECTION 73.** 980.015 (2) (c) of the statutes is amended to read:

21 980.015 (2) (c) The anticipated release on conditional release under s. 971.17
22 or the anticipated termination of or discharge of a ~~from a commitment order under~~
23 s. 971.17, if the person who has been found not guilty of a sexually violent offense by
24 reason of mental disease or defect ~~under s. 971.17.~~

25 **SECTION 74.** 980.015 (2) (d) of the statutes is created to read:

1 980.015 (2) (d) The anticipated release on parole or discharge of a person
2 committed under ch. 975 for a sexually violent offense.

3 **SECTION 75.** 980.015 (4) of the statutes is renumbered 980.14 (2) and amended
4 to read:

5 980.14 (2) Any agency or officer, employee, or agent of an agency is immune
6 from criminal or civil liability for any acts or omissions as the result of a good faith
7 effort to comply with any provision of this section chapter.

8 **SECTION 76.** 980.02 (1) (a) of the statutes is amended to read:

9 980.02 (1) (a) The department of justice at the request of the agency with
10 jurisdiction, as defined in s. 980.015 (1), over the person. ~~If the department of justice~~
11 ~~decides to file a petition under this paragraph, it shall file the petition before the date~~
12 ~~of the release or discharge of the person.~~

13 **SECTION 77.** 980.02 (1) (b) 3. of the statutes is created to read:

14 980.02 (1) (b) 3. The county in which the person is in custody under a sentence,
15 a placement to a secured correctional facility, as defined in s. 938.02 (15m), a secured
16 child caring institution, as defined in s. 938.02 (15g), or a secured group home, as
17 defined in s. 938.02 (15p), or a commitment order.

18 **SECTION 78.** 980.02 (1m) of the statutes is created to read:

19 980.02 (1m) A petition filed under this section shall be filed before the person
20 is released or discharged.

21 **SECTION 79.** 980.02 (2) (ag) of the statutes is repealed.

22 **SECTION 80.** 980.02 (2) (c) of the statutes is amended to read:

23 980.02 (2) (c) The person is dangerous to others because the person's mental
24 disorder ~~creates a substantial probability~~ makes it likely that he or she will engage
25 in acts of sexual violence.

1 **SECTION 81.** 980.02 (4) (intro.) of the statutes is amended to read:

2 980.02 (4) (intro.) A petition under this section shall be filed in any one of the
3 following:

4 **SECTION 82.** 980.02 (6) of the statutes is created to read:

5 980.02 (6) A court assigned to exercise jurisdiction under chs. 48 and 938 does
6 not have jurisdiction over a petition filed under this section alleging that a child is
7 a sexually violent person.

8 **SECTION 83.** 980.03 (2) (intro.) of the statutes is amended to read:

9 980.03 (2) (intro.) Except as provided in ss. ~~980.09 (2) (a)~~ 980.038 (2) and
10 ~~980.10 980.093~~ and without limitation by enumeration, at any hearing under this
11 chapter, the person who is the subject of the petition has the right to:

12 **SECTION 84.** 980.03 (3) of the statutes is amended to read:

13 980.03 (3) The person who is the subject of the petition, the person's attorney,
14 the department of justice or the district attorney may request that a trial under s.
15 980.05 be to a jury of 12. A request for a jury trial shall be made as provided under
16 s. 980.05 (2). Notwithstanding s. 980.05 (2), if the person, the person's attorney, the
17 department of justice or the district attorney does not request a jury trial, the court
18 may on its own motion require that the trial be to a jury of 12. The jury shall be
19 selected as provided under s. 980.05 (2m). A verdict of a jury under this chapter is
20 not valid unless it is unanimous.

21 **SECTION 85.** 980.03 (4) of the statutes is renumbered 980.031 (3) and amended
22 to read:

23 980.031 (3) Whenever a person who is the subject of a petition filed under s.
24 980.02 or who has been committed under s. 980.06 is required to submit to an
25 examination of his or her mental condition under this chapter, he or she may retain

1 ~~experts or a licensed physician, licensed psychologist, or other mental health~~
2 ~~professional persons to perform an examination. If the person is indigent, the court~~
3 ~~shall, upon the person's request, appoint a qualified and available licensed~~
4 ~~physician, licensed psychologist, or other mental health professional to perform an~~
5 ~~examination of the person's mental condition and participate on the person's behalf~~
6 ~~in a trial or other proceeding under this chapter at which testimony is authorized.~~
7 ~~Upon the order of the circuit court, the county shall pay, as part of the costs of the~~
8 ~~action, the costs of a licensed physician, licensed psychologist, or other mental health~~
9 ~~professional appointed by a court under this subsection to perform an examination~~
10 ~~and participate in the trial or other proceeding on behalf of an indigent person.~~

11 ~~(4) If the person a party retains a qualified expert or the court appoints a~~
12 ~~licensed physician, licensed psychologist, or other mental health professional person~~
13 ~~of his or her own choice to conduct an examination under this chapter of the person's~~
14 ~~mental condition, the examiner shall have reasonable access to the person for the~~
15 ~~purpose of the examination, as well as to the person's past and present treatment~~
16 ~~records, as defined in s. 51.30 (1) (b), and patient health care records as provided~~
17 ~~under s. 146.82 (2) (e). If the person is indigent, the court shall, upon the person's~~
18 ~~request, appoint a qualified and available expert or professional person to perform~~
19 ~~an examination and participate in the trial or other proceeding on the person's~~
20 ~~behalf. Upon the order of the circuit court, the county shall pay, as part of the costs~~
21 ~~of the action, the costs of an expert or professional person appointed by a court under~~
22 ~~this subsection to perform an examination and participate in the trial or other~~
23 ~~proceeding on behalf of an indigent person. An expert (cm), past and present juvenile~~
24 ~~records, as provided under ss. 48.396 (6), 48.78 (2) (e), 938.396 (10), and 938.78 (2)~~

1 (e), and the person's past and present correctional records, including presentence
2 investigation reports under s. 972.15 (6).

3 (5) A licensed physician, licensed psychologist, or other mental health
4 professional person appointed to assist an indigent person who is subject to a petition
5 who is expected to be called as a witness by one of the parties or by the court may not
6 be subject to any order by the court for the sequestration of witnesses at any
7 proceeding under this chapter. No licensed physician, licensed psychologist, or other
8 mental health professional who is expected to be called as a witness by one of the
9 parties or by the court may be permitted to testify at any proceeding under this
10 chapter unless a written report of his or her examination has been submitted to the
11 court and to both parties at least 10 days before the proceeding.

12 **SECTION 86.** 980.03 (5) of the statutes is repealed.

13 **SECTION 87.** 980.031 (title) of the statutes is created to read:

14 **980.031 (title) Examinations.**

15 **SECTION 88.** 980.031 (1) and (2) of the statutes are created to read:

16 980.031 (1) If a person who is the subject of a petition filed under s. 980.02
17 denies the facts alleged in the petition, the court may appoint at least one qualified
18 licensed physician, licensed psychologist, or other mental health professional to
19 conduct an examination of the person's mental condition and testify at trial.

20 (2) The state may retain a licensed physician, licensed psychologist, or other
21 mental health professional to examine the mental condition of a person who is the
22 subject of a petition under s. 980.02 or who has been committed under s. 980.06 and
23 to testify at trial or at any other proceeding under this chapter at which testimony
24 is authorized.

25 **SECTION 89.** 980.034 of the statutes is created to read:

1 **980.034 Change of place of trial or jury from another county.** (1) The
2 person who is the subject of a petition filed under s. 980.02 or who has been
3 committed under this chapter may move for a change of the place of a jury trial under
4 s. 980.05 on the ground that an impartial trial cannot be had in the county in which
5 the trial is set to be held. The motion shall be made within 20 days after the
6 completion or waiver of the probable cause hearing under s. 980.04 (2), whichever is
7 applicable, except that it may be made after that time for cause.

8 (2) The motion shall be in writing and supported by affidavit which shall state
9 evidentiary facts showing the nature of the prejudice alleged. The department of
10 justice or the district attorney, whichever filed the petition under s. 980.02, may file
11 counter-affidavits.

12 (3) If the court determines that there exists in the county where the action is
13 pending such prejudice that a fair trial cannot be had, it shall, except as provided in
14 sub. (4), order that the trial be held in any county where an impartial trial can be had.
15 Only one change may be granted under this subsection. The judge who orders the
16 change in the place of trial shall preside at the trial. Preliminary matters prior to
17 trial may be conducted in either county at the discretion of the court.

18 (4) (a) Instead of changing the place of trial under sub. (3), the court may
19 require the selection of a jury under par. (b) if all of the following apply:

20 1. The court has decided to sequester the jurors after the commencement of the
21 trial.

22 2. There are grounds for changing the place of trial under sub. (1).

23 3. The estimated costs to the county appear to be less using the procedure under
24 this subsection than using the procedure for holding the trial in another county.

1 (b) If the court decides to proceed under this subsection it shall follow the
2 procedure under sub. (3) until the jury is chosen in the 2nd county. At that time, the
3 proceedings shall return to the original county using the jurors selected in the 2nd
4 county. The original county shall reimburse the 2nd county for all applicable costs
5 under s. 814.22.

6 **SECTION 90.** 980.036 of the statutes is created to read:

7 **980.036 Discovery and inspection.** (1) DEFINITIONS. In this section:

8 (a) “Person subject to this chapter” means a person who is subject to a petition
9 filed under s. 980.02 or a person who has been committed under s. 980.06.

10 (b) “Prosecuting attorney” means an attorney representing the state in a
11 proceeding under this chapter.

12 (2) WHAT A PROSECUTING ATTORNEY MUST DISCLOSE TO A PERSON SUBJECT TO THIS
13 CHAPTER. Upon demand, a prosecuting attorney shall, within a reasonable time after
14 the probable cause hearing and before a trial under s. 980.05 or other proceeding
15 under s. 980.07 (7), 980.09 (2m), or 980.093 (3), disclose to a person subject to this
16 chapter or the person’s attorney, and permit the person or the person’s attorney to
17 inspect and copy or photograph, all of the following materials and information, if the
18 material or information is within the possession, custody, or control of the state:

19 (a) Any written or recorded statement made by the person concerning the
20 allegations in the petition filed under s. 980.02 or concerning other matters at issue
21 in the trial or proceeding and the names of witnesses to the person’s written
22 statements.

23 (b) A written summary of all oral statements of the person that the prosecuting
24 attorney plans to use in the course of the trial or proceeding and the names of
25 witnesses to the person’s oral statements.

1 (c) Evidence obtained in the manner described under s. 968.31 (2) (b), if the
2 prosecuting attorney intends to use the evidence at the trial or proceeding.

3 (d) A copy of the person's criminal record.

4 (e) A list of all witnesses, and their addresses, whom the prosecuting attorney
5 intends to call at the trial or proceeding. This paragraph does not apply to rebuttal
6 witnesses or witnesses called for impeachment only.

7 (f) Any relevant written or recorded statements of a witness named on a list
8 under par. (e), including all of the following:

9 1. Any videotaped oral statement of a child under s. 908.08.

10 2. Any reports prepared in accordance with s. 980.031 (5).

11 (g) The results of any physical or mental examination or any scientific or
12 psychological test, experiment, or comparison that the prosecuting attorney intends
13 to offer in evidence at the trial or proceeding, and any raw data that were collected,
14 used, or considered in any manner as part of the examination, test, experiment, or
15 comparison.

16 (h) The criminal record of a witness for the state that is known to the
17 prosecuting attorney.

18 (i) Any physical or documentary evidence that the prosecuting attorney intends
19 to offer in evidence at a trial or proceeding.

20 (j) Any exculpatory evidence.

21 **(3) WHAT A PERSON SUBJECT TO THIS CHAPTER MUST DISCLOSE TO THE PROSECUTING**
22 **ATTORNEY.** Upon demand, a person who is subject to this chapter or the person's
23 attorney shall, within a reasonable time after the probable cause hearing and before
24 a trial under s. 980.05 or other proceeding under s. 980.07 (7), 980.09 (2m), or 980.093
25 (3), disclose to the prosecuting attorney, and permit the prosecuting attorney to

1 inspect and copy or photograph, all of the following materials and information, if the
2 material or information is within the possession, custody, or control of the person or
3 the person's attorney:

4 (a) A list of all witnesses, other than the person, whom the person intends to
5 call at the trial or proceeding, together with their addresses. This paragraph does
6 not apply to rebuttal witnesses or witnesses called for impeachment only.

7 (b) Any relevant written or recorded statements of a witness named on a list
8 under par. (a), including any reports prepared in accordance with s. 980.031 (5).

9 (c) The results of any physical or mental examination or any scientific or
10 psychological test, experiment, or comparison that the person intends to offer in
11 evidence at the trial or proceeding, and any raw data that were collected, used, or
12 considered in any manner as part of the examination, test, experiment, or
13 comparison.

14 (d) The criminal record of a witness named on a list under par. (a) if the criminal
15 record is known to the person's attorney.

16 (e) Any physical or documentary evidence that the person intends to offer in
17 evidence at the trial or proceeding.

18 (4) COMMENT OR INSTRUCTION ON FAILURE TO CALL WITNESS. No comment or
19 instruction regarding the failure to call a witness at the trial may be made or given
20 if the sole basis for the comment or instruction is the fact that the name of the witness
21 appears upon a list furnished under this section.

22 (5) TESTING OR ANALYSIS OF EVIDENCE. On motion of a party, the court may order
23 the production of any item of evidence or raw data that is intended to be introduced
24 at the trial for testing or analysis under such terms and conditions as the court
25 prescribes.

1 **(6) PROTECTIVE ORDER.** Upon motion of a party, the court may at any time order
2 that discovery, inspection, or the listing of witnesses required under this section be
3 denied, restricted, or deferred, or make other appropriate orders. If the prosecuting
4 attorney or the attorney for a person subject to this chapter certifies that to list a
5 witness may subject the witness or others to physical or economic harm or coercion,
6 the court may order that the deposition of the witness be taken pursuant to s. 967.04
7 (2) to (6). The name of the witness need not be divulged prior to the taking of such
8 deposition. If the witness becomes unavailable or changes his or her testimony, the
9 deposition shall be admissible at trial as substantive evidence.

10 **(7) IN CAMERA PROCEEDINGS.** Either party may move for an in camera inspection
11 by the court of any document required to be disclosed under sub. (2) or (3) for the
12 purpose of masking or deleting any material that is not relevant to the case being
13 tried. The court shall mask or delete any irrelevant material.

14 **(8) CONTINUING DUTY TO DISCLOSE.** If, subsequent to compliance with a
15 requirement of this section, and prior to or during trial, a party discovers additional
16 material or the names of additional witnesses requested that are subject to discovery,
17 inspection, or production under this section, the party shall promptly notify the other
18 party of the existence of the additional material or names.

19 **(9) SANCTIONS FOR FAILURE TO COMPLY.** (a) The court shall exclude any witness
20 not listed or evidence not presented for inspection, copying, or photographing
21 required by this section, unless good cause is shown for failure to comply. The court
22 may in appropriate cases grant the opposing party a recess or a continuance.

23 (b) In addition to or in place of any sanction specified in par. (a), a court may,
24 subject to sub. (4), advise the jury of any failure or refusal to disclose material or

1 information required to be disclosed under sub. (2) or (3), or of any untimely
2 disclosure of material or information required to be disclosed under sub. (2) or (3).

3 **(10) PAYMENT OF PHOTOCOPY COSTS IN CASES INVOLVING INDIGENT RESPONDENTS.**

4 When the state public defender or a private attorney appointed under s. 977.08
5 requests photocopies of any item that is discoverable under this section, the state
6 public defender shall pay any fee charged for the photocopies from the appropriation
7 under s. 20.550 (1) (a). If the person providing photocopies under this section charges
8 the state public defender a fee for the photocopies, the fee may not exceed the actual,
9 necessary, and direct cost of photocopying.

10 **(11) EXCLUSIVE METHOD OF DISCOVERY.** Chapter 804 does not apply to
11 proceedings under this chapter. This section provides the only methods of obtaining
12 discovery and inspection in proceedings under this chapter.

13 **SECTION 91.** 980.038 of the statutes is created to read:

14 **980.038 Miscellaneous procedural provisions. (1) MOTIONS CHALLENGING**
15 **JURISDICTION OR COMPETENCY OF COURT OR TIMELINESS OF PETITION.** (a) A motion
16 challenging the jurisdiction or competency of the court or the timeliness of a petition
17 filed under s. 980.02 shall be filed within 10 days after the court holds the probable
18 cause hearing under s. 980.04 (2). Failure to file a motion within the time specified
19 in this paragraph waives the right to challenge the jurisdiction or competency of the
20 court or the timeliness of a petition filed under s. 980.02.

21 (b) Notwithstanding s. 801.11, a court may exercise personal jurisdiction over
22 a person who is the subject of a petition filed under s. 980.02 even though the person
23 is not served as provided under s. 801.11 (1) or (2) with a verified petition and
24 summons or with an order for detention under s. 980.04 (1) and the person has not
25 had a probable cause hearing under s. 980.04 (2).

1 **(2) EVIDENCE OF REFUSAL TO PARTICIPATE IN EXAMINATION.** (a) At any hearing
2 under this chapter, the state may present evidence or comment on evidence that a
3 person who is the subject of a petition filed under s. 980.02 or a person who has been
4 committed under this chapter refused to participate in an examination of his or her
5 mental condition that was being conducted under this chapter or that was conducted
6 before the petition under s. 980.02 was filed for the purpose of evaluating whether
7 to file a petition.

8 (b) A licensed physician, licensed psychologist, or other mental health
9 professional may indicate in any written report that he or she prepares in connection
10 with a proceeding under this chapter that the person whom he or she examined
11 refused to participate in the examination.

12 **(3) TESTIMONY BY TELEPHONE OR LIVE AUDIOVISUAL MEANS.** Unless good cause to
13 the contrary is shown, proceedings under ss. 980.04 (2) (a) and 980.08 (5) (d) may be
14 conducted by telephone or audiovisual means, if available. If the proceedings are
15 required to be reported under SCR 71.02 (2), the proceedings shall be reported by a
16 court reporter who is in simultaneous voice communication with all parties to the
17 proceeding. Regardless of the physical location of any party to the telephone call, any
18 action taken by the court or any party shall have the same effect as if made in open
19 court. The proceedings shall be conducted in a courtroom or other place reasonably
20 accessible to the public. Simultaneous access to the proceeding shall be provided to
21 persons entitled to attend by means of a loudspeaker or, upon request to the court,
22 by making a person party to the telephone call without charge.

23 **(4) MOTIONS FOR POSTCOMMITMENT RELIEF; APPEAL.** (a) A motion for
24 postcommitment relief by a person committed under s. 980.06 shall be made in the
25 time and manner provided in ss. 809.30 and 809.40. An appeal by a person who has

1 been committed under s. 980.06 from a final order under s. 980.06, 980.08, or 980.09
2 or from an order denying a motion for postcommitment relief or from both shall be
3 taken in the time and manner provided in ss. 808.04 (3), 809.30, and 809.40. If a
4 person is seeking relief from an order of commitment under s. 980.06, the person
5 shall file a motion for postcommitment relief in the trial court prior to an appeal
6 unless the grounds for seeking relief are sufficiency of the evidence or issues
7 previously raised.

8 (b) An appeal by the state from a final judgment or order under this chapter
9 may be taken to the court of appeals within the time specified in s. 808.04 (4) and in
10 the manner provided for civil appeals under chs. 808 and 809.

11 (5) FAILURE TO COMPLY WITH TIME LIMITS; EFFECT. Failure to comply with any time
12 limit specified in this chapter does not deprive the circuit court of personal or subject
13 matter jurisdiction or of competency to exercise that jurisdiction. Failure to comply
14 with any time limit specified in this chapter is not grounds for an appeal or grounds
15 to vacate any order, judgment, or commitment issued or entered under this chapter.
16 Failure to object to a period of delay or a continuance waives the time limit that is
17 the subject of the period of delay or continuance.

18 (6) ERRORS AND DEFECTS NOT AFFECTING SUBSTANTIAL RIGHTS. The court shall, in
19 every stage of a proceeding under this chapter, disregard any error or defect in the
20 pleadings or proceedings that does not affect the substantial rights of either party.

21 **SECTION 92.** 980.04 (1) of the statutes is amended to read:

22 980.04 (1) Upon the filing of a petition under s. 980.02, the court shall review
23 the petition to determine whether to issue an order for detention of the person who
24 is the subject of the petition. The person shall be detained only if there is probable
25 cause to believe that the person is eligible for commitment under s. 980.05 (5). A

1 person detained under this subsection shall be held in a facility approved by the
2 department. If the person is serving a sentence of imprisonment, is in a secured
3 correctional facility, as defined in s. 938.02 (15m), a secured child caring institution,
4 as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p),
5 or is committed to institutional care, and the court orders detention under this
6 subsection, the court shall order that the person be transferred to a detention facility
7 approved by the department. A detention order under this subsection remains in
8 effect until the ~~person is discharged~~ petition is dismissed after a hearing under sub.
9 (3) or after a trial under s. 980.05 (5) or until the effective date of a commitment order
10 under s. 980.06, whichever is applicable.

11 **SECTION 93.** 980.04 (2) of the statutes is renumbered 980.04 (2) (a) and
12 amended to read:

13 980.04 (2) (a) Whenever a petition is filed under s. 980.02, the court shall hold
14 a hearing to determine whether there is probable cause to believe that the person
15 named in the petition is a sexually violent person. ~~If the person named in the petition~~
16 ~~is in custody, the court shall hold the probable cause hearing within 72 hours after~~
17 ~~the petition is filed, excluding Saturdays, Sundays and legal holidays. If the person~~
18 ~~named in the petition is not in custody, the~~ Except as provided in par. (b), the court
19 shall hold the probable cause hearing within a reasonable time 30 days, excluding
20 Saturdays, Sundays, and legal holidays, after the filing of the petition, unless that
21 time is extended by the court for good cause shown upon its own motion, the motion
22 of any party, or the stipulation of the parties.

23 **SECTION 94.** 980.04 (2) (b) of the statutes is created to read:

24 980.04 (2) (b) If the person named in the petition is in custody under a sentence,
25 dispositional order, or commitment and the probable cause hearing will be held after

1 the date on which the person is scheduled to be released or discharged from the
2 sentence, dispositional order, or commitment, the probable cause hearing under par.
3 (a) shall be held no later than 10 days after the person's scheduled release or
4 discharge date, excluding Saturdays, Sundays, and legal holidays, unless that time
5 is extended by the court for good cause shown upon its own motion, the motion of any
6 party, or the stipulation of the parties.

7 **SECTION 95.** 980.04 (3) of the statutes is amended to read:

8 980.04 (3) If the court determines after a hearing that there is probable cause
9 to believe that the person named in the petition is a sexually violent person, the court
10 shall order that the person be taken into custody if he or she is not in custody and
11 shall order the person to be transferred within a reasonable time to an appropriate
12 facility specified by the department for an evaluation by the department as to
13 whether the person is a sexually violent person. If the court determines that
14 probable cause does not exist to believe that the person is a sexually violent person,
15 the court shall dismiss the petition.

16 **SECTION 96.** 980.05 (1) of the statutes is amended to read:

17 980.05 (1) A trial to determine whether the person who is the subject of a
18 petition under s. 980.02 is a sexually violent person shall commence no later than 45
19 90 days after the date of the probable cause hearing under s. 980.04. The court may
20 grant ~~a continuance~~ one or more continuances of the trial date for good cause upon
21 its own motion, the motion of any party or the stipulation of the parties.

22 **SECTION 97.** 980.05 (1m) of the statutes is repealed.

23 **SECTION 98.** 980.05 (2m) of the statutes is created to read:

24 980.05 (2m) (a) At a jury trial under this section, juries shall be selected and
25 treated in the same manner as they are selected and treated in civil actions in circuit

1 court, except that, notwithstanding s. 805.08 (3), each party shall be entitled to 4
2 peremptory challenges or, if the court orders additional jurors to be selected under
3 s. 805.08 (2), to 5 peremptory challenges. A party may waive in advance any or all
4 of its peremptory challenges and the number of jurors called under par. (b) shall be
5 reduced by this number.

6 (b) The number of jurors selected shall be the number prescribed in sub. (2),
7 unless a lesser number has been stipulated to and approved under par. (c) or the court
8 orders that additional jurors be selected. That number of jurors, plus the number
9 of peremptory challenges available to all of the parties, shall be called initially and
10 maintained in the jury box by calling others to replace jurors excused for cause until
11 all jurors have been examined. The parties shall thereupon exercise in their order,
12 the state beginning, the peremptory challenges available to them, and if any party
13 declines to challenge, the challenge shall be made by the clerk by lot.

14 (c) At any time before the verdict in a jury trial under this section, the parties
15 may stipulate in writing or by statement in open court, on the record, with the
16 approval of the court, that the jury shall consist of any number less than the number
17 prescribed in sub. (2).

18 **SECTION 99.** 980.05 (3) (a) of the statutes is amended to read:

19 980.05 (3) (a) At a trial on a petition under this chapter, the petitioner has the
20 burden of proving ~~the allegations in the petition~~ beyond a reasonable doubt that the
21 person who is the subject of the petition is a sexually violent person.

22 **SECTION 100.** 980.05 (3) (b) of the statutes is amended to read:

23 980.05 (3) (b) If the state alleges that the sexually violent offense or act that
24 forms the basis for the petition was an act that was sexually motivated as provided

1 in s. 980.01 (6) (b) or (bm), the state is required to prove beyond a reasonable doubt
2 that the alleged sexually violent act was sexually motivated.

3 **SECTION 101.** 980.065 (1m) of the statutes is amended to read:

4 980.065 (1m) The department shall place a person committed under s. 980.06
5 at the secure mental health facility established under s. 46.055 (1), the Wisconsin
6 resource center established under s. 46.056 or a secure mental health unit or facility
7 provided by the department of corrections under sub. (2).

8 **SECTION 102.** 980.07 (1) of the statutes is renumbered 980.07 (1) (intro.) and
9 amended to read:

10 980.07 (1) (intro.) If a person has been committed under s. 980.06 and has not
11 been discharged under s. 980.09, the department shall conduct an examination of his
12 or her mental condition within ~~6~~ 12 months after ~~an~~ the date of the initial
13 commitment order under s. 980.06 and again thereafter at least once each 12 months
14 ~~for the purpose of determining~~ to determine whether the person has made sufficient
15 progress for the court to consider whether the person should be placed on supervised
16 release or discharged. At the time of a reexamination under this section, the person
17 who has been committed may retain or ~~seek to~~ have the court appoint ~~an~~ any of the
18 following:

19 (a) An examiner as provided under s. ~~980.03 (4)~~ 980.031 (3). The county shall
20 pay the costs of an examiner appointed under this paragraph as provided under s.
21 51.20 (18) (a).

22 **SECTION 103.** 980.07 (1) (b) of the statutes is created to read:

23 980.07 (1) (b) An attorney as provided under s. 980.03 (2) (a).

24 **SECTION 104.** 980.07 (1g) of the statutes is created to read:

1 980.07 (1g) Any examiners under this section shall have reasonable access to
2 the person for purposes of examination and to the person's past and present
3 treatment records, as defined in s. 51.30 (1) (b), and patient health care records, as
4 provided under s. 146.82 (2) (c).

5 **SECTION 105.** 980.07 (1m) of the statutes is created to read:

6 980.07 (1m) At the time for any examination under sub. (1), the department
7 shall prepare a treatment report based on its treating professionals' evaluation of the
8 person's progress in treatment and of whether that progress has been sufficient and
9 their description of the type of treatment that the person would need in the
10 community if supervised release were ordered. The department shall provide a copy
11 of this report to any examiner conducting an examination under sub. (1).

12 **SECTION 106.** 980.07 (2) of the statutes is amended to read:

13 980.07 (2) Any examiner conducting an examination under ~~this section~~ sub. (1)
14 shall prepare a written report of the examination no later than 30 days after the date
15 of the examination. The examiner shall place a copy of the report in the person's
16 medical records and shall provide a copy of the report to the department. The report
17 shall include an assessment of the risk that the person will reoffend, whether the risk
18 can be safely managed in the community if reasonable conditions of supervision and
19 security are imposed, and whether the treatment that the person needs is available
20 in the community. The department shall then send the treatment report, the written
21 examination report, and a written statement from the department recommending
22 either continued institutional care, supervised release, or discharge to the court that
23 committed the person under s. 980.06. A copy of each report and the department's
24 recommendation shall be provided also to the district attorney or department of
25 justice, whichever is applicable, and to the person's attorney as soon as he or she is

1 retained or appointed. If the department's examiner concludes that the person does
2 not meet the criteria for commitment as a sexually violent person, the department
3 shall petition for discharge in accordance with the provisions of s. 980.09 (1).

4 **SECTION 107.** 980.07 (3) of the statutes is amended to read:

5 980.07 (3) Notwithstanding sub. (1), the court that committed a person under
6 s. 980.06 may order a reexamination of the person at any time during the period in
7 which the person is subject to the commitment order. Any report ordered under this
8 subsection shall conform to subs. (1m) and (2).

9 **SECTION 108.** 980.07 (4) to (7) of the statutes are created to read:

10 980.07 (4) Within 30 days after the filing of the reexamination report,
11 treatment report, and recommendation under this section, the person subject to the
12 commitment, the district attorney, or the department of justice, whichever is
13 applicable, may object to the department's recommendation under sub. (2) by filing
14 a written objection with the court.

15 (5) (a) If the person files a timely objection without counsel, the court shall
16 serve a copy of the objection and any supporting documents on the district attorney
17 or department of justice, whichever is applicable. If the person objects through
18 counsel, his or her attorney shall serve the district attorney or department of justice,
19 whichever is applicable. If the district attorney or department of justice objects, it
20 shall serve the person or his or her counsel.

21 (b) If the person filing an objection is requesting discharge, the court may not
22 proceed under sub. (7). The court may proceed under s. 980.093 if the person files
23 a petition under that section.

24 (6) The district attorney or department of justice, whichever is applicable, may
25 employ experts or professional persons to support or oppose any recommendation.

1 **(6m)** Subject to s. 980.03 (2) (a), the court, before proceeding under sub. (7),
2 shall refer the matter to the authority for indigency determinations under s. 977.07
3 (1) and appointment of counsel under s. 977.05 (4) (j) if the person is not represented
4 by counsel. The determination of indigency and the appointment of counsel shall be
5 done as soon as circumstances permit.

6 **(7) (a)** Unless the department recommends continued institutional care and no
7 party files a timely objection, the court, without a jury, shall hold a hearing to
8 determine whether to authorize supervised release within 30 days after the date on
9 which objections are due under sub. (4), unless the petitioner waives this time limit.
10 Expenses of proceedings under this subsection shall be paid as provided under s.
11 51.20 (18) (b), (c), and (d).

12 (am) If the department chooses to appear and be heard at any hearing under
13 this subsection, the department may be represented at the hearing by its agency
14 counsel.

15 (b) The court shall determine from all of the evidence whether to continue
16 institutional care and, if not, what the appropriate placement would be for the person
17 while on supervised release. In making a decision under this subsection, the court
18 may consider, without limitation because of enumeration, the nature and
19 circumstances of the behavior that was the basis of the allegation in the petition
20 under s. 980.02 (2) (a), the person's mental history and present mental condition, the
21 person's progress or lack of progress in treatment, and, if the court were to authorize
22 supervised release, where the person would live, how the person would support
23 himself or herself, and what arrangements would be available to ensure that the
24 person would have access to and would participate in necessary treatment.

1 (bm) Unless the court determines that neither par. (d) 1. nor par. (d) 2. applies,
2 the court shall select a county to prepare a report under par. (c). Unless the court has
3 good cause to select another county, the court shall select the person's county of
4 residence. A preliminary decision by the court under this paragraph or under par.
5 (cm) to refer a case to a county department or the court's failure to make such a
6 decision shall not affect the court's power to authorize or not authorize supervised
7 release under this subsection.

8 (c) Unless the court determines that neither par. (d) 1. nor par. (d) 2. applies,
9 the court shall order the county department under s. 51.42 in the county of intended
10 placement to prepare a report, either independently or with the department of health
11 and family services, identifying prospective residential options for community
12 placement. In identifying prospective residential options, the county department
13 shall consider the proximity of any potential placement to the residence of other
14 persons on supervised release and to the residence of persons who are in the custody
15 of the department of corrections and regarding whom a sex offender notification
16 bulletin has been issued to law enforcement agencies under s. 301.46 (2m) (a) or (am).

17 (cm) If the court determines that the prospective residential options identified
18 in the report under par. (c) are inadequate, the court may, but is not required to, select
19 one or more other counties to prepare a report under par. (c).

20 (d) The court may not order that a person be placed on supervised release
21 unless it finds, based on all of the reports, trial records, and evidence presented, that
22 all of the following apply:

23 1. It is unlikely that the person will engage in acts of sexual violence if the
24 person is not continued in institutional care.

1 2. The person has demonstrated significant or satisfactory progress in his or
2 her treatment.

3 3. There is treatment reasonably available in the community that meets all of
4 the following requirements:

5 a. The treatment will meet the person's ongoing treatment needs.

6 b. The treatment will be provided by a department-approved provider.

7 c. The treatment provider has presented a specific course of treatment to the
8 department, has agreed to provide the treatment, will report progress to the
9 department on a regular basis, and will report violations immediately to the
10 department, consistent with the treatment and supervision needs of the person.

11 4. The person has agreed to comply with the conditions of, or department rules
12 regarding, supervised release or the requirements of the treatment provider and is
13 unlikely to violate such conditions, rules, or requirements.

14 5. The person has housing arrangements that are sufficiently secure to protect
15 the community, and the person or agency that is providing the housing to the person
16 who will be placed on supervised release agrees in writing to the following conditions:

17 a. To accept the person who will be placed supervised release.

18 b. To provide or allow for the level of safety that the court requires.

19 c. To immediately report to the court and the department of justice or the
20 district attorney, as applicable, any unauthorized absence of the person who will be
21 placed on supervised release from the housing arrangement to which the person has
22 been assigned. This subd. 5. c. does not apply unless the person or agency that is
23 providing the housing is a state or local government agency or is licensed by the
24 department.

1 6. No major discipline report was issued regarding the person during the 6
2 months immediately preceding the hearing.

3 7. Supervised release is in the best interest of the person.

4 **SECTION 109.** 980.08 of the statutes is repealed and recreated to read:

5 **980.08 Supervised release; procedures, implementation, revocation.**

6 (1) If the court determines under s. 980.07 (7) that supervised release is appropriate,
7 the court shall order the county department under s. 51.42 in the county of intended
8 placement to assist the department of health and family services in implementing
9 the supervised release placement.

10 (2) The department shall file with the court any additional rules of supervision
11 not inconsistent with the rules or conditions imposed by the court within 10 days of
12 imposing the rule.

13 (3) If the department wishes to change a rule or condition of supervision
14 imposed by the court, it must obtain the court's approval.

15 (4) An order granting supervised release places the person in the care, control,
16 and custody of the department. The department shall arrange for the care, control,
17 and treatment of the person in the least restrictive manner consistent with the
18 requirements of the person and in accordance with the order for supervised release.
19 Before a person is actually released under this section, the court shall notify the
20 municipal police department and county sheriff for the municipality and county in
21 which the person will be residing. The notification requirement under this
22 subsection does not apply if a municipal police department or county sheriff submits
23 to the court a written statement waiving the right to be notified.

24 (5) (a) If the department concludes that a person on supervised release, or
25 awaiting placement on supervised release, violated or threatened to violate a rule of

1 supervised release, it may petition for revocation of the order granting supervised
2 release. The department may also detain the person.

3 (b) If the department concludes that a person on supervised release, or
4 awaiting placement on supervised release, is a threat to the safety of others, it shall
5 detain the person and petition for revocation of the order granting supervised
6 release.

7 (c) If the department concludes that the order granting supervised release
8 should be revoked, it shall file a statement alleging the violation and a petition to
9 revoke the order for supervised release with the committing court and provide a copy
10 of each to the regional office of the state public defender responsible for handling
11 cases in the county where the committing court is located. If the department has
12 detained the person under par. (a) or (b), the department shall file the statement and
13 the petition and provide them to the state public defender within 72 hours after the
14 detention, excluding Saturdays, Sundays, and legal holidays. The court shall refer
15 the matter to the authority for indigency determinations under s. 977.07 (1) and
16 appointment of counsel under s. 977.05 (4) (j). The determination of indigency and
17 the appointment of counsel shall be done as soon as circumstances permit.

18 (d) The court shall hear the petition within 30 days, unless the hearing or time
19 deadline is waived. A final decision on the petition to revoke shall be made within
20 90 days of the filing of the petition. Pending the final revocation hearing, the
21 department may detain the person in the county jail or return him or her to
22 institutional care.

23 (6) (a) If the court finds after a hearing, by clear and convincing evidence, that
24 any rule has been violated and that the violation of the rule merits the revocation of
25 the order granting supervised release, the court may revoke the order for supervised

1 release and order that the person be placed in institutional care. The person shall
2 remain in institutional care until he or she is discharged from the commitment or
3 again placed on supervised release.

4 (b) If the court finds after a hearing, by clear and convincing evidence, that the
5 safety of others requires that supervised release be revoked, the court shall revoke
6 the order granting supervised release and order that the person be placed in
7 institutional care. The person shall remain in institutional care until he or she is
8 discharged from the commitment or again placed on supervised release.

9 SECTION 110. 980.09 (title) of the statutes is amended to read:

10 980.09 (title) **Petition for discharge; procedure with department's**
11 **approval.**

12 SECTION 111. 980.09 (1) (title) of the statutes is repealed.

13 SECTION 112. 980.09 (1) (a) of the statutes is renumbered 980.09 (1) and
14 amended to read:

15 980.09 (1) If the ~~secretary~~ department determines at any time that a person
16 committed under this chapter ~~is no longer~~ does not meet the criteria for commitment
17 as a sexually violent person, the ~~secretary~~ department shall ~~authorize the person to~~
18 petition the committing court for discharge. The ~~person~~ department shall file the
19 petition with the court and serve a copy upon the department of justice or the district
20 attorney's office that filed the petition under s. 980.02 (1), whichever is applicable.
21 The court, upon receipt of the petition for discharge, shall order a hearing to be held
22 within 45 90 days after the date of receipt of the petition.

23 SECTION 113. 980.09 (1) (b) of the statutes is renumbered 980.09 (2m) and
24 amended to read:

1 980.09 (2m) At a hearing under this ~~subsection~~ section, the district attorney
2 or the department of justice, whichever filed the original petition, shall represent the
3 state and shall have the right to have the petitioner examined by an expert or
4 professional person of his, her or its choice. ~~The hearing shall be before the court~~
5 ~~without a jury.~~ The state has the burden of proving by clear and convincing evidence
6 that the petitioner is still currently meets the criteria for commitment as a sexually
7 violent person.

8 **SECTION 114.** 980.09 (1) (c) of the statutes is renumbered 980.09 (3) and
9 amended to read:

10 980.09 (3) If the court is satisfied that the state has not met its burden of proof
11 under ~~par. (b)~~ sub. (2m), the petitioner shall be discharged from the custody or
12 supervision of the department. If the court is satisfied that the state has met its
13 burden of proof under ~~par. (b)~~ sub. (2m), the court may proceed under 980.07 (7) (b)
14 to (d) to determine, ~~using the criterion specified in s. 980.08 (4),~~ whether to modify
15 the petitioner's existing commitment order by authorizing supervised release.

16 **SECTION 115.** 980.09 (2) of the statutes is repealed.

17 **SECTION 116.** 980.093 of the statutes is created to read:

18 **980.093 Petition for discharge without department's approval. (1)**
19 PETITIONS IN GENERAL. A committed person may petition the committing court for
20 discharge without the department's approval. The court shall deny the petition
21 under this section without a hearing unless the petition alleges facts from which the
22 court may conclude the person's condition has changed so that the person does not
23 meet the criteria for commitment as a sexually violent person.

24 (2) COURT REVIEW OF PETITION. The court shall review the petition to determine
25 if it contains facts from which the court may conclude that the person does not meet

1 the criteria for commitment as a sexually violent person. In determining under this
2 subsection whether facts exist that might warrant such a conclusion, the court shall
3 consider any current or past reports filed under s. 980.07, relevant arguments in the
4 petition and in the state's written response, and any supporting documentation
5 provided by the person or the state.

6 (3) HEARING. The court shall hold a hearing within 90 days of the determination
7 that the petition contains facts from which the court may conclude that the person
8 does not meet the criteria for commitment as a sexually violent person. The state has
9 the burden of proving by clear and convincing evidence that the person meets the
10 criteria for commitment as a sexually violent person.

11 (4) DISPOSITION. If the court is satisfied that the state has not met its burden
12 of proof under sub. (3), the petitioner shall be discharged from the custody or
13 supervision of the department. If the court is satisfied that the state has met its
14 burden of proof under sub. (3), the court may proceed under s. 980.07 (7) (b) to (d) to
15 determine whether to modify the petitioner's existing commitment order by
16 authorizing supervised release.

17 **SECTION 117.** 980.095 of the statutes is created to read:

18 **980.095 Procedures for discharge hearings.** (1) USE OF JURIES. (a) The
19 district attorney or the department of justice, whichever filed the original petition,
20 or the petitioner or his or her attorney may request that a hearing under s. 980.093
21 or 980.096 be to a jury of 6. A jury trial is deemed waived unless it is demanded
22 within 10 days of the filing of the petition for discharge.

23 (b) Juries shall be selected and treated in the same manner as they are selected
24 and treated in civil actions in circuit court. The number of jurors prescribed in
25 par.(a), plus the number of peremptory challenges available to all of the parties, shall

1 be called initially and maintained in the jury box by calling others to replace jurors
2 excused for cause until all jurors have been examined. The parties shall thereupon
3 exercise in their order, the state beginning, the peremptory challenges available to
4 them, and if any party declines to challenge, the challenge shall be made by the clerk
5 by lot.

6 (c) No verdict shall be valid or received unless it is agreed to by at least 5 of the
7 jurors.

8 (2) DEPARTMENT'S RIGHT TO BE HEARD. If the department chooses to appear and
9 be heard at any discharge hearing, the department may be represented at the
10 hearing by its agency counsel.

11 (3) POST VERDICT MOTIONS. Motions after verdict may be made without further
12 notice upon receipt of the verdict.

13 (4) APPEALS. Any party may appeal an order under this subsection as a final
14 order under chs. 808 and 809.

15 **SECTION 118.** 980.10 of the statutes is repealed.

16 **SECTION 119.** 980.101 (2) (a) of the statutes is amended to read:

17 980.101 (2) (a) If the sexually violent offense was the sole basis for the
18 allegation under s. 980.02 (2) (a) and there are no other judgments relating to a
19 sexually violent offense committed by the person, the court shall reverse, set aside,
20 or vacate the judgment under s. 980.05 (5) that the person is a sexually violent
21 person, vacate the commitment order, and discharge the person from the custody or
22 supervision of the department.

23 **SECTION 120.** 980.11 (2) (intro.) of the statutes is amended to read:

1 980.11 (2) (intro.) If the court places a person on supervised release under s.
2 980.08 or discharges a person under s. 980.09 or ~~980.10~~ 980.093, the department
3 shall do all of the following:

4 **SECTION 121.** 980.12 (1) of the statutes is amended to read:

5 980.12 (1) Except as provided in ss. ~~980.03 (4)~~ 980.031 (3) and 980.08 (3), the
6 department shall pay from the appropriations under s. 20.435 (2) (a) and (bm) for all
7 costs relating to the evaluation, treatment, and care of persons evaluated or
8 committed under this chapter.

9 **SECTION 122.** 980.14 (title) of the statutes is created to read:

10 **980.14 (title) Immunity.**

11 **SECTION 123.** 980.14 (1) of the statutes is created to read:

12 980.14 (1) In this section, “agency” means the department of corrections, the
13 department of health and family services, the department of justice, or a district
14 attorney.

15 **SECTION 124. Nonstatutory provisions.**

16 (1) (a) There is created a committee to assist the state in determining the
17 location for the facility enumerated in 2001 Wisconsin Act 16, section 9107 (1) (d) 1.,
18 that will be a transitional facility for the housing of persons committed to the custody
19 of the department of health and family services under chapter 980 of the statutes.

20 (b) The departments of corrections and health and family services shall provide
21 necessary administrative support services to the committee.

22 (c) The department of administration shall reimburse members of the
23 committee for their actual and necessary expenses incurred in carrying out their
24 functions, from the appropriation under section 20.505 (4) (ba) of the statutes, within
25 the budget authorized under section 16.40 (14) of the statutes.

1 (d) The members of the committee shall be:

2 1. The chairperson of the Milwaukee County board of supervisors or his or her
3 designee.

4 2. The chief of police of the city of Milwaukee or his or her designee.

5 3. The county executive of Milwaukee County or his or her designee.

6 4. The district attorney of Milwaukee County or his or her designee.

7 5. The mayor of the city of Milwaukee or his or her designee.

8 6. The sheriff of Milwaukee County or his or her designee.

9 7. One representative of the Milwaukee County Law Enforcement Executives
10 Association who is not from the city of Milwaukee.

11 8. One representative of the intergovernmental cooperation council who is not
12 from the city of Milwaukee.

13 9. Three other individuals who are residents of the city of Milwaukee, to be
14 appointed by the governor.

15 10. Two other individuals who are residents of Milwaukee County but who are
16 not residents of the city of Milwaukee, to be appointed by the governor.

17 (e) The governor shall appoint the chair of the committee from the individuals
18 appointed under par. (d) 9. and 10.

19 (f) The committee shall hold public hearings in Milwaukee County regarding
20 the selection of a location of the facility. The committee shall consider all of the
21 following factors when determining the criteria for the location of the facility or when
22 determining specific locations for the facility:

23 1. Community safety.

24 2. Proximity to sensitive locations.

25 3. Ability to make the facility secure.

1 4. Accessibility to treatment for the persons living in the facility.

2 (g) No later than December 31, 2004, the committee shall submit a report to
3 the departments of corrections and health and family services recommending
4 specific locations that the committee determines are appropriate for the placement
5 of the facility.

6 **SECTION 125. Initial applicability.**

7 (1) This act first applies to reviews regarding detention and probable cause
8 hearings under section 980.04 of the statutes, as affected by this act, and trials under
9 section 980.05 of the statutes, as affected by this act, that are based on a petition filed
10 under s. 980.02 of the statutes, as affected by this act, on the effective date of this
11 subsection.

12 (2) This act first applies to periodic reexaminations conducted under section
13 980.07 of the statutes, as affected by this act, begun on the effective date of this
14 subsection and to court proceedings resulting from those reexaminations.

15 (3) This act first applies to proceedings to revoke supervised release under
16 section 980.08 (5) of the statutes, as affected by this act, that are commenced on the
17 effective date of this subsection, except that the treatment of section 980.08 (5) of the
18 statutes, with respect to where a person may be detained while a petition to revoke
19 supervised release is pending, first applies to a person whose detention commences
20 on the effective date of this subsection.

21 (4) This act first applies to discharge proceedings commenced on the effective
22 date of this subsection.

23 **SECTION 126. Effective date.**

1 (1) This act takes effect on the first day of the 2nd month beginning after
2 publication.

3 **(END)**

ON FLOOR
TUES
FRL

Dsida, Michael

From: Vance, Vaughn L.
Sent: Tuesday, March 02, 2004 5:01 PM
To: Dsida, Michael
Subject: FW: LRB 03-4158/1 Corrections/additions

Mike:

Within what I am sure are a complex set of drafting instructions that have come your way or will come your way with respect to 980 revisions. I forward this to you with the hope that it will be of use to you at some point.

Thanks.

vaughn

-----Original Message-----

From: Fallon, Thomas J.
Sent: Tuesday, March 02, 2004 4:24 PM
To: Vance, Vaughn L.
Cc: Wellman, Sally L.; Weinstein, Warren D.; Tinker, Steve E.; Weber, Greg M.
Subject: FW: LRB 03-4158/1 Corrections/additions

Ok, as noted in my voice mail, I can't make corrections on the pdf format so my corrections are based on the draft below:

Page 5, in the write up; # 5 Para 2 line 6 - The bill also provides..... clarifies is the correct verb. This may seem like splitting hairs but I can assure you it is an important distinction.

Page 19, section 20 Why is this section needed?

Page 42, line 17 insert after the word test or instrument, *ok*

Page 43, line 15 insert after the word test or instrument, *ok*

Page 51, line 20 under s. 980.09 or s. 980.093 *ok* [or ~~date~~ change to is committed]

Page 54, insert a new section to make clear..... s. 5 (c) if no objection is made within the time permitted the department's recommendation for continued institutional care shall be implemented without a hearing. If the recommendation is for supervised release or discharge and there is no objection from the prosecution, the court shall proceed as set forth in ss. 980.07 (7) and 980.09.

Page 54, line 24 instrumental should be changed to institutional *specify that it shd be preliminary*

Page 55, lines 8 and 15 eliminate the language..... Unless the court determines that para (d) 1. does not apply, This redundant; and if not redundant it overweighs this factor. Since the court must find all factors present this is unnecessary and complicates the equation. *Not needed 506 (7) (b) rgs*

Page 57, lines 13-16 What happened to If the person is to be placed outside of the county of residence, the county department under the s. 51.42 for the county of placement shall assist in implementing the supervised release placement. *Not needed 506 (7) (b) rgs*

Page 59, lines 7- 8 any rule has been violated; and in its discretion that the violation of *ok* *ct to select a county*

the rule merits..... The burden of proof should apply only to the violation and must not apply to the courts determination of whether the violations merit revocation!

✓ Page 59, line 23 in an effort to be consistent..... If the department or its examiner determines.....

Page 61, we should have a section that tells the court what to do if it doesn't find facts to justify a hearing/trial. *oh*

Line 2, The court shall review the petition within 30 days and it may hold a hearing to determine

Line 8, court or jury

*add to
end of sub (2)*

✓ Create section (3) If the court does not find facts sufficient from which a court or jury could conclude the person does not meet the criteria for commitment, it shall dismiss the petition forthwith.

✓ Renumber (3) to (4) and (4) to (5)

✓ Page 61 lines 19-21 If the court or jury is satisfied under sub (4), the petitioner shall be discharged from the custody or supervision of the department.

Thomas J. Fallon
Assistant Attorney General
Wisconsin Dept. of Justice
17 West Main St.
PO Box 7857
Madison, Wisconsin 53707
608) 264-9488 Voice
608) 267-2778 Fax

-----Original Message-----

From: Tinker, Steve E.
Sent: Wednesday, February 18, 2004 4:54 PM
To: Fallon, Thomas J.; Weber, Greg M.; Wellman, Sally L.; Weinstein, Warren D.
Subject: FW: LRB 03-4158/1 (attached - per your request)

this version will be introduced some time this week

-----Original Message-----

From: Vance, Vaughn L.
Sent: Wednesday, February 18, 2004 4:42 PM
To: Tinker, Steve E.
Subject: FW: LRB 03-4158/1 (attached - per your request)



03-4158/1

Plc From Rep. Starkness

1) Community panel

04/10/2

9. 3 other indivs resid of City County

2 of whom do not reside in City of ^{Mont}, ^{apptd govern}

10. - delete

may + min

spkr min leader

each appt 1 citizen

may party picks 1st

if sub, then city

city, the ~~sub~~ suburban

2d apptee

Not an elected official

(e) comte elects its own chair among citizen reps

(g) at least 3 specific locations

- ~~Each~~ Use Stone language re sustainability

Rq. comte to attempt to come up w/

maximize consensus

List strengths + weaknesses of each site recommended

2) All approp's out - first 5 sections out!
Add Stone 5, 6 + 7

Vaughn - 69

(1) paper review

sub (1)(1)(1)

(2) court shall do terminal 3 facts

add lang. to sub (2)

Hanaman, Cathlene

From: Dsida, Michael
Sent: Thursday, March 04, 2004 3:05 PM
To: Hanaman, Cathlene
Subject: FW: 980 additions/corrections UPDATE RE CHANGES

okay to make these changes (in my email to Rep. Staskunas)

-----Original Message-----

From: Ramirez, Adrienne
Sent: Wednesday, March 03, 2004 5:04 PM
To: Dsida, Michael
Subject: RE: 980 additions/corrections UPDATE RE CHANGES

Mike -

That will be fine. I'll let Tony know.

Thanks,

Adrienne

-----Original Message-----

From: Dsida, Michael
Sent: Wednesday, March 03, 2004 4:44 PM
To: Rep.Staskunas
Cc: Vance, Vaughn L.
Subject: FW: 980 additions/corrections UPDATE RE CHANGES

At the request of Tom Fallon at DOJ, we will: 1) delete the "unless..." clauses on page 44, lines 1 and 8 of the sub; and 2) replace the "may, but is not required to, select one or more other counties" at page 44, line 18 with "shall select another county" -- assuming that's okay with you.

-----Original Message-----

From: Fallon, Thomas J.
Sent: Wednesday, March 03, 2004 3:57 PM
To: Vance, Vaughn L.; Dsida, Michael
Cc: Weinstein, Warren D.; Wellman, Sally L.; Tinker, Steve E.; Weber, Greg M.
Subject: 980 additions/corrections Reply

Mike I just left you a voice mail on this. Please remove the language in red. If the report and the court do not address all factors it will be an erroneous exercise of discretion and reversible error.

Page 55, lines 8 and 15 eliminate the language..... Unless the court determines that para (d) 1. does not apply, This redundant; and if not redundant it overweighs this factor. Since the court must find all factors present this is unnecessary and complicates the equation.

The idea here was to spare the county department the obligation to prepare the report under par. (c) and the court the obligation to conduct a hearing regarding all of the other factors if the court can determine as an initial matter that par. (d) 1. does not apply. I agree that it is not as clear as it should be. I think the only way this would work is if you had a 2-step hearing process. If you don't want to do that, I'll take the "unless..." clauses out.

Here, I assume you mean s. 7 (cm); if that's the case, the use of "may" is problematic based on existing case law; Keding, Sprosty etc.. I am not sure we can sustain an adverse finding on appeal if the court denies SR solely because of the placement issue if the court was not mandated and did not look to other counties.

Page 57, lines 13-16 What happened to If the person is to be placed outside of the county of residence, the county department under the s. 51.42 for the county of placement shall assist in implementing the supervised release placement.

This provision is no longer needed because the court selects a county of intended placement under sub. (7) (bm). There is no need to refer to any other county.

Thomas J. Fallon
Assistant Attorney General
Wisconsin Dept. of Justice
17 West Main St.
PO Box 7857
Madison, Wisconsin 53707
608) 264-9488 Voice
608) 267-2778 Fax

Hanaman, Cathlene

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Sent: Wednesday, March 03, 2004 4:44 PM
To: Rep.Staskunas
Cc: Vance, Vaughn L.
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Sent: Wednesday, March 03, 2004 3:57 PM
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